



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1992

Ms. Janice A. Cassidy
Attorney at Law
P. O. Box 592
San Benito, Texas 78586

OR92-678

Dear Ms. Cassidy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 17463.

The City of San Benito (the "city"), which you represent, has received a request for a copy of the Intergovernmental Risk Pool Liability/Property Management Information Report (the "report") containing information relating to a certain settlement agreement involving the city, a former city employee, and the city's insurance carrier. You contend that the requestor seeks the report to learn the amount that the city paid its former employee to settle the lawsuit. You advise that one of the terms of the settlement agreement is that neither party to the action will reveal the amount of the settlement. Violation of this nondisclosure agreement will, you state, result in nullifying the settlement and increase the possibility that the case will be reopened.

The Intergovernmental Risk Pool Liability/Property Management Information Report is a quarterly report that the Texas Municipal League generates to apprise the city of claims outstanding against it, the reserves set on each pending claim, and the total amounts that the city has paid to date on each claim, including claims the city has settled. You advise that the report reflects not only monies the city has paid as the result of the nondisclosure agreement but also an insurance carrier's estimate of the actual worth of each claim presently pending in litigation against the city. You claim that the terms of the settlement agreement make the requested report confidential. You also claim that section 3(a)(3) of the Open Records Act excepts from required public disclosure information relating to "reserves set on each case currently in litigation" contained in the report.

First, we address your claim that the terms of the requested settlement agreement make the requested information confidential. A governmental body may agree or contract to keep information confidential only if a statute specifically authorizes it to do so.¹ See Open Records Decision Nos. 514 (1988) at 1-2; 444 (1986) at 6; 437 (1986) at 4; 414 (1984) at 3. You do not indicate, nor is it otherwise apparent, that a statute specifically authorizes the city to contract to keep information confidential, as the city attempted to do by executing the confidentiality provision of this settlement agreement. Accordingly, we conclude that the terms of the settlement agreement do not make the requested information confidential.

Next, we consider your section 3(a)(3) claim. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990).

The report contains information relating to claims outstanding against the city, the reserves set on each pending claim, and the total amounts that the city has paid to date on each claim, including claims the city has settled. You advise us as follows

the second column from the left which is entitled *location* indicates the current status of each of the claims listed. The claims that are no longer pending are marked "closed." The cases which are pending are designated by the word "open." The column entitled *total* amount indicates the reserve set by TML


¹However, to avoid the constitutional prohibition against impairment of the obligation of contracts, a governmental body may withhold agreements it entered prior to June 14, 1973, pursuant to an express promise of confidentiality. Open Records Decision No. 284 (1981).

on each claim and any amount which has been paid to date on the claim. The column entitled *outstanding* indicates the amount of any reserve less any payments made on the claim.²

(Footnote added.) Having examined the report, we conclude that section 3(a)(3) protects from required public disclosure all information in the report relating to claims designated "open," as this information clearly relates to pending litigation. The information relating to claims marked "final," however, does not relate to pending litigation. Accordingly, it is not protected by section 3(a)(3) of the Open Records Act and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-678.

Yours very truly,


Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/lmm

Ref.: ID# 17463
ID# 17615

cc: Ms. Martha A. McClain
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² Claims which are no longer pending are in fact marked "final."